1942. File No. B. Munis. Bom. City II/42

Legal DEPARTMENT

B BRANCH

K

Subject:—

p-10-E

Governor's Bill No. VI of 1942.

A Bill to amend the City of Bombay Municipal Act, 1888.

(Amendt. of Ss. 181-185, 187-190, 191-198, 200, 203-206, 210)

Bom. VIII of 1942.

File No. B. Munis. Bom. City. II/42

Stl. Sectt. Slip 24 B e.

Bom. VIII of 1942. 394-B

C O N T E N T S.

Legal Department File No. B, Municipal Corp. City II/42.

Sr. No.	Compilation No.	Subject	Pages
		A Bill to Amend the city of Bombay M Municipal Act, 1888	
1.	U.O. to G.D.No. 7099 dt. 7.8.40	Draft Bill.	1-5
2.	U.O. to G.D.No . 790 dt. 28.1. 41.	S. 191(1) Regarding of	
3.	L.D. letter no. 2346 dt. 16.3.42.	Governor's Bill No. VI of 1942.	9-17
4.	H.I.No. 1120 dt. 31/3/42.	Governor's assent to the Bill	19
5.	G.R.L.D. No. 2870 dt. 1.4.42.	Publication of the Act No. VIII of 1942.	21-29
6.	———	Governor's Bill No. VI of 1942.	31-53.
7.	———	Act No. VIII of 1942.	55-63

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A revised draft Bill is appended.

2. Clause 2 of the revised draft Bill:-

(i) Vehicles belonging to the Central Government cannot be made liable to the tax in view of section 154 of the Government of Indian Act 1935. This has been made clear in revised sub-clauses (8) and (e 1) .

(ii) The proposed proviso to section 161(g) has been redrafted so as to bring it in accordance with the rules made under the Motor Vehicles Act, 1939 . Rule 43 of these rules provides for trading certificates to be issued to dealers corresponding to dealer's numbers issued under the old rules.

3. Clause 3 of the revised draft Bill:- Paragraph 4(4) of General Department office note at pages 148-14, ante: Sub-section (1) of the new section ~~16~~ 162 in the draft Bill sent by the Corporation at page 137 ante provides that the said tax shall be leviable primarily from the owner of or person having possession or control of any vehicle or animal in respect of which the tax is leviable. The object of the amendment is stated to be to make it clear that while the person owning or having possession or control of any vehicle or animal is primarily liable for the payment of the tax, the ultimate liability is always on the vehicle or animal. The provision in the amendment appears to have been borrowed from the provision relating to property taxes contained in section 146 of the Act. But the use of the term "primarily" in the proposed new section 162 does not appear to fit in and is unnecessary. The use of the term "primarily" indicates that there is another class of persons who would be liable in case of default by the persons primarily liable. In case of the property taxes, section 146 of the Act specifies certain persons who are primarily liable. Section 209 of the Act provides , in case of default on the part of such persons primarily liable, for

the tax to be leviable from certain other persons, namely, thes occupiers of the premises. There is no similar provision in the Act in respect of tax on vehicles and animals. The word "primarily" is, therefore, meaningless in the proposed clause and has, therefore, been deleted. Even without the use of this terms , the object underlying the amendment as stated in the Statement of Obects and Reasons at page 143 ante will be fully carried carried out by the draft Bill.

4. In view of what is stated in paragraph 3 above, the word "primarily" has been omitted throughout from the revised draft Bill. Clause 6 of the draft Bill sent by the Municipality is unnecessary and has been deleted from the revided draft Bill .

5. Paragraph 4(6) of General Department note (pages 149-150 ante):- There is no legal objection to the retaining of the provisions of sub-sections (2) and (3) of section 188 as suggesseted by the Corporation

6 Paragraph 4(8) of General Department note (page 150 ante).:- If sub-section (3) of section 188 in the Corporation's draft at page 139 ante is retained, it is not necessary to include the provisos to clause (c) in section 189A in the draft supplied by the Remembrancer of Legal Affairs at page 93 ante.

7. Paragraph 4 (9) of general Department note (page 150 ante). Ther is no objection to the deletion of sub-section (2)of section 189A as proposed.

8. lause 11 of the revised Draft Bill:- It seems desirable that copies of all the four sections 188 to 191 should accompany the Bil l instead of sections 188 and 190 only.

9. In view of the provisicn made in sub-section (1) of section 203 providing for distress and sale of vehicles and animals in respect of which a tax is due by clause 12 of the revised draft Bill, it would be necessary to make consequential changes in sections 204 to 206 of the Act. Clauses 13 to 15 of the revised draft Bill provide for the necessary amendments.

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10 Clauses 12(3) and 16 of the draft Bill at pages 141 to 143 ante.:- The provision in section 111 that the fees from licenses granted under the Public Conveyances Act shall be credited to the Corporation is not valid. Unless the sum payable is charged, it will not be payable to the Corporation. Clauses 12(3) and 16 of the draft Bill have therefore been omitted.

11 The Bill requires the previous approval of the Governor General. It falls under entry 13 of the Provincial Legislative List in the Seventh Schedule to the Government of India Act, 1935. It does not require to be reserved for consideration of the Governor General under section 107(2) of the Government of India Act, 1935.

O.O. Ed/- J.R.D.
7-8

Remembrancer of Legal Affairs.

U.R. to O.D.No. 7099, dated the 7th August 1940.

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Office of the R.L.A.

Paragraph 2 of the G.D.office note (p. 235 ante):- From the drafting point of view, the sub-sections (1) and (2) of section 191, suggested by the Corporation at p. 12 226 ante may be recast as under:-

"191. (1) No refund of the tax shall be claimable from the Commissioner under section 190 unless notice in writing of the occurrence of the circumstances giving rise to such claim or of the commencement of circumstances which may give rise to such claim has been given to the Commissioner by the person who paid the tax or his agent.

Refund not claimable unless notice is given to the Commissioner.

(2) If such notice is not received by the Commissioner within 3 days of the occurrence or commencement of the circumstances as aforesaid, the period previous to the date of the receipt of the notice shall be excluded in computing the period of eighty, sixty and thirty days referred to in section 190, for the purposes of granting any refund."

2. Paragraph 3 of the G.D. office note:-The previous approval of the Governor General is required to every Bill before it is enacted into an Act by the Governor under executive instructions and not under any statute. (Copy of Secretary to the Governor's memorandum dated 6th December 1939 is sent herewith.). If it is intended to invite public opinion on the Bill, it is desirable that the Governor General ~~xxx~~ should be moved to accord his approval to the Bill as it would be finally shaped after the criticism of the public is received and considered by Government.

O.G. 24-P.E.~~xxx~~

Remembrancer of Legal Affairs.

G.O. to G.D.No. 790, dated the 28th January 1941.

S.A.K.

4.5.56.

No. 2346

Legal Department.
Bombay Castle. 16th March 1942.

From

F.N.Noon, Esquire, Bar-at-Law, I.C.S.,

Secretary to the Government of Bombay

To

The Secretary to the Governor.

Subject: A Bill to amend the City of Bombay Municipal Act, 1888.

Sir,

With reference to your Memorandum No. 201(33), dated the 5th January 1942, addressed to the General Department, on the above subject, I am directed to forward herewith for the assent of His Excellency the Governor, a copy of the Bill to amend the City of Bombay Municipal Act, 1888, prepared by His Excellency the Governor under paragraph (2) of the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935.

2. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act, 1935, or falls within the purview of clause (a),(b),(c),or (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. The subject-matter of the Bill falls under entry No. 13 in the Provincial Legislative List in the Seventh Schedule to the Government of India Act, 1935. None of the provisions of the Bill is repugnant to the provisions of any earlier Federal law or existing Act Indian law with respect to any matter enumerated in the Concurrent Legislative List. It is not, therefore, necessary to reserve the Bill for consideration of the Governor-General with reference to paragraph (2) of the Proclamation and section 107(2) of the Government of India Act, 1935.

S.A.K.
4/5/56.

4. The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement.

5. I am also to forward herewith one spare copy of the Bill.

I have the honour to be,

Sir,

Your most obedient servant.

O.C. 24/-P.M.Mees.

14/3

Secretary to the Government of Bombay,
Legal Department.

Through The Secretary to the Government of Bombay

General Department.

S.A.K.
4/5/56.

No. 201(33)

Office of the Governor's Secretary.
Government House

From

J.P.Irvin, Esquire, DSO. MC. ICS.

Secretary to the Governor of Bombay

To.

The Secretary to Government.

Legal Department. Bombay.

Bombay 27th March 1942.

subject: A Bill to amend the City of Bombay Municipal Act, 1888.

Sir,

With reference to your letter No. 2346, dated the 16th March 1942. I am directed to return herewith the copy of the Bill to amend the City of Bombay unicipal Act, 1888, prepared by His Excellency the Governor under paragraph (2) of the Proclamation, dated the 4th November 1939, issued by Him under section 93 of the Government of India Act, 1935, and to state that under the provisions of the aforesaid paragraph, His Excellency the Governor is pleased to declare that he assents to the Bill in the name of His Majesty.

I have the honour to be,

Sir,
Your most obedient servant,

Sd/-

Secretary to the Governor of Bombay

S.A.E.

4/5/56.

Acts.

Publication of the City of Bombay Municipal (Second Amendment) Act, 1942.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 2870
Fonnay Castle, 1st MayApril 1942.

Letter to the Secretary to the Governor, No. 2346, dated the 16th March 1942.

Letter from the Secretary to the Governor, No. 201(33), dated the 27th March 1942.

"With reference to your letter No. 2346, dated the 16th March 1942, I am directed to return herewith the copy of the Bill to amend the City of Bombay Municipal Act, 1888, prepared by His Excellency the Governor under paragraph (2) of the Proclamation, dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, and to state that under the provisions of the aforesaid paragraph, His Excellency the Governor is pleased to declare that the assents to the Bill in the name of His Majesty."

RESOLUTION.- The law should be published as Bombay Act No. VIII of 1942, in the Bombay Government Gazette dated the 2nd April 1942.

2. The Act should be translated into Marathi, Gujarati, and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the General Department.

By order of the Governor of Bombay.

Sd/- B.G. Murdeshwar.
(P.H.No.3.
for) Secretary to Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 15 gazette copies of the Act may be forwarded to the Legal Department).

The General Department.) With a
*The Oriental Translator to Government.) copy of
The Secretary to the Bombay Legislative Council.) the Act.
The Secretary to the Bombay Legislative Assembly.)

*With five extra copies.

S.A.K.
4/5/56.

Act

GOVERNOR'S ~~BILL~~ No. VIII OF 1942.

A Bill to amend the City of Bombay Municipal Act, 1888.

WHEREAS it is expedient to amend the City of Bombay Municipal Act, 1888, for the purposes hereinafter appearing;

Bom. III of 1888.

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935, all powers vested by or under the said Act in the Provincial Legislature;

26 Geo. 5 Ch. 2.

NOW, THEREFORE, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act :—

Short title and commencement.

1. (*1*) This Act may be called the City of Bombay Municipal (Second Amendment) Act, 1942.

(*2*) It shall come into force on such date as the Provincial Government may by notification in the Official Gazette appoint.

Amendment of section 181 of Bom. III of 1888.

2. (*1*) Section 181 of the City of Bombay Municipal Act, 1888, hereinafter called "the said Act", shall be renumbered as sub-section (*1*) of the said section and in sub-section (*1*) so renumbered—

Bom. III of 1888.

(*i*) for clause (*d*) the following shall be substituted, namely :—

"(*d*) any vehicle or animal exempted from municipal taxation under section 16 of the Indian Territorial Force Act, 1920, or section 34 of the Auxiliary Force Act, 1920;";

XLVIII of 1920. XIX of 1920.

(*ii*) for clause (*e*) the following shall be substituted, namely :—

"(*e*) vehicles and animals vesting in His Majesty for purposes of the Central Government;

(*e*-1) vehicles and animals, other than those specified in clause (*e*), vesting in His Majesty and used solely for public purposes and not used or intended to be used for purposes of profit;

(*e*-2) vehicles and animals belonging to the Corporation ; "

(*iii*) to clause (*g*) the following proviso shall be added, namely :—

" Provided that a tax at the rate of rupees thirty shall be levied quarterly in advance from every dealer in motor vehicles for every seven motor vehicles in respect of which a Trade Certificate is issued to him under rules made under the Motor Vehicles Act, 1939." IV of 1939.

(*2*) After sub-section (*1*) of section 181 so renumbered, the following new sub-section (*2*) shall be inserted, namely :—

" (*2*) If any question arises under clause (*e*-1) of sub-section (*1*) whether any vehicle or animal belonging to His Majesty is or is not used solely for public purposes or is or is not used or intended to be used for purposes of profit, such question shall be determined by the Provincial Government, whose decision shall be final."

Amendment of section 182 of Bom. III of 1888.

3. For section 182 of the said Act, the following shall be substituted, namely :—

Persons responsible for the payment of the tax.

" 182. (*1*) The said tax shall be leviable from the owner of or person having possession or control of any vehicle or animal in respect of which the said tax is leviable.

(*2*) For the purposes of this section, the person in whose name a motor vehicle is for the time being registered under the Motor Vehicles Act, 1939, IV of 1939. shall, until the contrary is proved, be presumed to be the owner or person in possession or control of such motor vehicle."

Deletion of sections 183 and 184 of Bom. III of 1888.

4. Sections 183 and 184 of the said Act shall be deleted.

Amendment of section 185 of Bom. III of 1888.

5. In section 185 of the said Act, for the words and figures " which such livery-stable-keeper or other person or dealer would otherwise be liable to pay under section 180 " the words and figures " leviable

under section 180 which such livery-stable-keeper or other person or dealer would otherwise be liable to pay " shall be substituted.

Amendment of section 187 of Bom. III of 1888.

6. In sub-section (*1*) of section 187 of the said Act,—

(*a*) for the words " the charge " where they occur for the first time, the words " possession or control " shall be substituted ; and

(*b*) for the words " the charge " where they occur for the second and third times, the words " the possession or under the control " shall be substituted.

Amendment of section 188 of Bom. III of 1888.

7. For section 188 of the said Act, the following shall be substituted, namely :—

Notice to be given to Commissioner by a person who becomes owner or possessed of a vehicle or animal in respect of which liability arises, etc.

" 188. (*1*) Every person who becomes the owner or obtains possession or control of any vehicle or animal in respect of which the said tax is leviable shall give notice in writing to the Commissioner within fifteen days after he has become the owner or has obtained possession or control of such vehicle or animal, of the fact that he has become the owner or has obtained possession or control of such vehicle or animal, as the case may be.

(*2*) Every person who ceases to own or have possession or control of any vehicle or animal in respect of which the said tax is leviable shall give notice in writing to the Commissioner of the fact that he has ceased to own or have possession or control of such vehicle or animal. Such person shall, in addition to any other penalty to which he may be liable, continue to be liable for the payment of the said tax leviable from time to time in respect of such vehicle or animal until he gives such notice :

Provided that nothing herein contained shall be held to diminish the liability to pay the said tax of the person who becomes the owner or obtains possession or control of such vehicle or animal or affect the prior claim of the Commissioner on such vehicle or animal for the recovery of any tax due in respect thereof. "

Amendment of section 189 of Bom. III of 1888.

8. In section 189 of the said Act,—

(1) after the word "stable" the word ", garage" shall be inserted; and

(2) for the words "the charge" the words "the possession or under the control" shall be substituted.

Insertion of new sections 190 and 191 in Bom. III of 1888.

9. After section 189 of the said Act, the following new sections shall be inserted, namely:—

Refund of tax on vehicles and animals when and to what extent obtainable.

"190. If the tax leviable on any vehicle or animal in respect of any quarter has been paid and if during such quarter such vehicle or animal ceases to be kept within the City, or is destroyed or is otherwise rendered permanently unfit for use or if such vehicle has been under repairs or if such animal has been kept in any institution for the reception of infirm or disused animals or is certified by a Veterinary Surgeon to have become unfit for use and has not been used, the person who paid the tax leviable on such vehicle or animal shall, subject to the provisions hereinafter contained, and on the Commissioner being satisfied in this behalf, be entitled to receive from the Commissioner, if the period in such quarter for which such vehicle or animal has not been kept in the City or has not been used, on account of such vehicle or animal being destroyed or rendered permanently unfit for use or on account of such vehicle being under repairs or such animal being kept in any institution for the reception of infirm or disused animals or such animal having been certified by a Veterinary Surgeon to have become unfit for use, is

(*a*) not less than eighty days, the full amount of the tax paid,

(*b*) not less than sixty days, two-thirds of the tax paid,

(*c*) not less than thirty days, one-third of the tax paid.

No refund of the tax shall be granted if such period is less than thirty days.

Refund not claimable unless notice is given to the Commissioner.

191. (*1*) No refund of the tax shall be claimable from the Commissioner under section 190 unless notice in writing of the occurrence of the circumstances giving rise to such claim or of the commencement of circumstances which may give rise to such claim has been given to the Commissioner by the person who paid the tax or his agent.

(*2*) If such notice is not received by the Commissioner within three days of the occurrence or commencement of the circumstances as aforesaid, the period previous to the date of the receipt of the notice shall be excluded in computing the period of eighty, sixty and thirty days referred to in section 190, for the purposes of granting any refund.

(*3*) It shall be in the discretion of the Commissioner to disallow any claim for refund of the tax, unless application claiming such refund is made to him in writing before the expiry of 15 days after the end of the quarter to which the claim relates and is accompanied by the bill presented to the applicant under section 200 for the amount of the tax from which the refund is claimed."

Amendment of section 198 of Bom. III of 1888.

10. In section 198 of the said Act—

(1) In sub-section (*1*),—

(*a*) after the word "animals" the following shall be inserted, namely :—

"(including the tax payable under the proviso to clause (*g*) of sub-section (*1*) of section 181)"; and

(*b*) for the words "payable quarterly in arrear" the words "paid quarterly in advance" shall be substituted;

(2) after sub-section (*1*) the following new sub-section shall be inserted, namely :—

"(*1A*) If in any quarter a vehicle or animal becomes liable to such tax, such tax shall be leviable thereon from the earliest day in the quarter on which such vehicle or animal so becomes liable and the amount of tax leviable for such quarter shall be, if such earliest day occurs—

(*a*) in the first month of such quarter, the whole tax for such quarter,

(*b*) in the second month of such quarter, two-thirds of the tax for such quarter,

(*c*) in the last month of such quarter, one-third of the tax for such quarter, provided that no tax shall be leviable for such quarter if such earliest day occurs within the last 10 days of such quarter."

Amendment of section 200 of Bom. III of 1888.

11. To sub-section (*2*) of section 200 of the said Act, the following shall be added at the end, namely :—

"Every such bill for the payment of tax on vehicles and animals shall have printed on the reverse side of the bill the provisions of sections 188 to 191."

Amendment of section 203 of Bom. III of 1888.

12. In sub-section (*1*) of section 203 of the said Act, after the words "the said premises" the following shall be added, namely :—

"or, if the tax be due in respect of any vehicle or animal, by distress and sale of such vehicle or animal in whomsoever's ownership, possession or control, the same may be."

Amendment of section 204 of Bom. III of 1888.

13. In section 204 of the said Act, after the words "any tax" the words "or the vehicles or animals in respect of which the tax is due" shall be inserted.

Amendment of section 205 of Bom. III of 1888.

14. In section 205 of the said Act—

(*a*) after the word "chattels" at both places where it occurs the words "and vehicles or animals" shall be inserted ; and

(*b*) after the word and letter "Schedule K" the words "or in a similar form" shall be inserted.

Amendment of section 206 of Bom. III of 1888.

15. In section 206 of the said Act, in sub-sections (*1*) and (*2*), after the word "chattels" the words "or vehicles or animals" shall be inserted.

Amendment of section 210 of Bom. III of 1888.

16. In section 210 of the said Act, the words "or who would be liable for any sum on account of the tax on vehicles and animals if the current quarter had come to a close," occurring in sub-section (*1*) and the words "or about to become due" occurring in sub-section (*1*) and in sub-section (*2*) shall be deleted.

STATEMENT.

Under section 198 of the City of Bombay Municipal Act, 1888, tax on vehicles and animals is payable quarterly in arrear, on each first day of April, July, October and January. Further, although in terms of section 180 of the said Act, the tax is to be levied on vehicles and animals, the liability for payment of the tax is now a personal liability only. By reason thereof, the Corporation has suffered serious loss in revenue. The object of the Bill is to curtail this loss by facilitating the collection of the tax by making tax payable quarterly in advance instead of in arrear and by attaching ultimate liability to vehicles and animals on the analogy of the property taxes.

The proposed amendments are for the purpose of carrying out the above object.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.